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DELTA AIR LINES, INC.

7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 BON SUNG KOO,
12 Plaintiff,
13 vs.
14 DELTA AIR LINES, INC., a Delaware
corporation; and DOES 1-10, inclusive,)
15 Defendant.)
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) Case No. 2:22-cv-08294 ODW (MAAx)
) Before the Hon. Otis D. Wright, II
) *Assigned for all Discovery Matters to*
) Hon. Maria A. Audero.
) Courtroom 690
)
) (Removed From Los Angeles Superior
) Court Case No. 22STCV32991)

**STIPULATED PROTECTIVE
ORDER**

Action Filed: October 7, 2022

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production
3 of confidential, proprietary, or private information for which special protection from
4 public disclosure and from use for any purpose other than prosecuting this litigation
5 may be warranted. Accordingly, the parties hereby stipulate to and petition the Court
6 to enter the following Stipulated Protective Order. The parties acknowledge that this
7 Stipulated Protective Order does not confer blanket protections on all disclosures or
8 responses to discovery and that the protection it affords from public disclosure and use
9 extends only to the limited information or items that are entitled to confidential
10 treatment under the applicable legal principles. The parties further acknowledge, as set
11 forth in Section 13.3, below, that this Stipulated Protective Order does not entitle them
12 to file confidential information under seal; Local Rule 79-5 sets forth the procedures
13 that must be followed and the standards that will be applied when a party seeks
14 permission from the Court to file material under seal.

15 2. GOOD CAUSE STATEMENT

16 “It is well-established that the fruits of pre-trial discovery are, in the absence of
17 a court order to the contrary, presumptively public. Rule 26(c) authorizes a district
18 court to override this presumption where ‘good cause’ is shown.” *San Jose Mercury*
19 *News, Inc. v. United States Dist. Ct.*, 187 F.3d 1096, 1103 (9th Cir.1999). The Rule
20 authorizes district courts to issue “any order which justice requires to protect a party
21 or person from annoyance, embarrassment, oppression, or undue burden.” *Phillips v.*
22 *GMC*, 307 F.3d 1206, 1212 (9th Cir. 2002) (emphasis in original) (quoting Fed. R.
23 Civ. P. 26(c)). Upon such a showing of “good cause,” *i.e.*, “specific prejudice or
24 harm” resulting from public disclosure, rather than “broad allegations of harm,
25 unsubstantiated by specific examples or articulated reasoning,” this Court has “broad
26 latitude” to grant a protective order “to prevent disclosure of materials for many types
27 of information, including, *but not limited to*, trade secrets or other confidential
28 research, development, or commercial information.” *Phillips*, 307 F.3d at 1210-12

STIPULATED PROTECTIVE ORDER

(emphasis in original) (citing, inter alia, *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992); Fed. R. Civ. P. 26(c)(7)).

In California, the right to privacy is set forth in Article I, Section I of the California Constitution. The parties anticipate that discovery may involve the disclosure of individuals' private financial information and other private and personally sensitive information, which may be appropriate for protection under a "blanket" protective order. *Keith H. v. Long Beach Unified Sch. Dist.*, 228 F.R.D. 652, 660 (C.D. Cal. 2005) (approving protective order covering personal financial information, juvenile court records, and other private information).

Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and to serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

3. DEFINITIONS

3.1. Action: This pending federal lawsuit.

3.2. Challenging Party: A Party or Nonparty that challenges the designation of information or items under this Stipulated Protective Order.

3.3. "CONFIDENTIAL" Information or Items: Information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

3.4. Counsel (without qualifier): Outside Counsel of Record and In-House Counsel (as well as their support staff).

1 3.5. Designating Party: A Party or Nonparty that designates information or
2 items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL.”

4 3.6. Disclosure or Discovery Material: All items or information, regardless
5 of the medium or manner in which it is generated, stored, or maintained (including,
6 among other things, testimony, transcripts, and tangible things), that are produced or
7 generated in disclosures or responses to discovery in this matter.

8 3.7. Expert: A person with specialized knowledge or experience in a matter
9 pertinent to the litigation who has been retained by a Party or its counsel to serve as
10 an expert witness or as a consultant in this Action.

11 3.8. In-House Counsel: Attorneys who are employees of a party to this
12 Action. In-House Counsel does not include Outside Counsel of Record or any other
13 outside counsel.

14 3.9. Nonparty: Any natural person, partnership, corporation, association, or
15 other legal entity not named as a Party to this action.

16 3.10. Outside Counsel of Record: Attorneys who are not employees of a
17 party to this Action but are retained to represent or advise a party to this Action and
18 have appeared in this Action on behalf of that party or are affiliated with a law firm
19 which has appeared on behalf of that party, and includes support staff.

20 3.11. Party: Any party to this Action, including all of its officers, directors,
21 employees, consultants, retained experts, In-House Counsel, and Outside Counsel of
22 Record (and their support staffs).

23 3.12. Producing Party: A Party or Nonparty that produces Disclosure or
24 Discovery Material in this Action.

25 3.13. Professional Vendors: Persons or entities that provide litigation support
26 services (e.g., photocopying, videotaping, translating, preparing exhibits or
27 demonstrations, and organizing, storing, or retrieving data in any form or medium)
28 and their employees and subcontractors.

1 3.14. Protected Material: Any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL.”

3 3.15. Receiving Party: A Party that receives Disclosure or Discovery
4 Material from a Producing Party.

5 4. SCOPE

6 The protections conferred by this Stipulated Protective Order cover not only
7 Protected Material (as defined above), but also (1) any information copied or
8 extracted from Protected Material; (2) all copies, excerpts, summaries, or
9 compilations of Protected Material; and (3) any testimony, conversations, or
10 presentations by Parties or their Counsel that might reveal Protected Material.

11 Any use of Protected Material at trial shall be governed by the orders of the
12 trial judge. This Stipulated Protective Order does not govern the use of Protected
13 Material at trial.

14 5. DURATION

15 Even after final disposition of this litigation, the confidentiality obligations
16 imposed by this Stipulated Protective Order shall remain in effect until a Designating
17 Party agrees otherwise in writing or a court order otherwise directs. Final disposition
18 shall be deemed to be the later of (1) dismissal of all claims and defenses in this
19 Action, with or without prejudice; and (2) final judgment herein after the completion
20 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
21 including the time limits for filing any motions or applications for extension of time
22 pursuant to applicable law.

23 6. DESIGNATING PROTECTED MATERIAL

24 6.1. Exercise of Restraint and Care in Designating Material for Protection.
25 Each Party or Nonparty that designates information or items for protection under this
26 Stipulated Protective Order must take care to limit any such designation to specific
27 material that qualifies under the appropriate standards. The Designating Party must
28 designate for protection only those parts of material, documents, items, or oral or

1 written communications that qualify so that other portions of the material,
2 documents, items, or communications for which protection is not warranted are not
3 swept unjustifiably within the ambit of this Stipulated Protective Order.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations
5 that are shown to be clearly unjustified or that have been made for an improper
6 purpose (e.g., to unnecessarily encumber the case development process or to impose
7 unnecessary expenses and burdens on other parties) expose the Designating Party to
8 sanctions.

9 6.2. Manner and Timing of Designations. Except as otherwise provided in
10 this Stipulated Protective Order (see, *e.g.*, Section 6.2(a)), or as otherwise stipulated
11 or ordered, Disclosure or Discovery Material that qualifies for protection under this
12 Stipulated Protective Order must be clearly so designated before the material is
13 disclosed or produced.

14 Designation in conformity with this Order requires:

15 (a) For information in documentary form (e.g., paper or electronic
16 documents, but excluding transcripts of depositions or other pretrial or trial
17 proceedings), that the Producing Party affix at a minimum the legend
18 “CONFIDENTIAL” to each page that contains Protected Material. If only a portion
19 or portions of the material on a page qualifies for protection, the Producing Party also
20 must clearly identify the protected portion(s) (e.g., by making appropriate markings
21 in the margins).

22 A Party or NonParty that makes original documents available for inspection
23 need not designate them for protection until after the inspecting Party has indicated
24 which documents it would like copied and produced. During the inspection and
25 before the designation, all of the material made available for inspection shall be
26 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents
27 it wants copied and produced, the Producing Party must determine which documents,
28 or portions thereof, qualify for protection under this Stipulated Protective Order.

1 Then, before producing the specified documents, the Producing Party must affix the
 2 legend “CONFIDENTIAL” to each page that contains Protected Material. If only a
 3 portion or portions of the material on a page qualifies for protection, the Producing
 4 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
 5 markings in the margins).

6 (b) For testimony given in depositions, that the Designating Party
 7 identify the Disclosure or Discovery Material on the record, before the close of the
 8 deposition, all protected testimony.

9 (c) For information produced in nondocumentary form, and for any
 10 other tangible items, that the Producing Party affix in a prominent place on the
 11 exterior of the container or containers in which the information or item is stored the
 12 legend “CONFIDENTIAL.” If only a portion or portions of the information warrants
 13 protection, the Producing Party, to the extent practicable, shall identify the protected
 14 portion(s).

15 6.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent
 16 failure to designate qualified information or items does not, standing alone, waive the
 17 Designating Party’s right to secure protection under this Stipulated Protective Order
 18 for such material. Upon timely correction of a designation, the Receiving Party must
 19 make reasonable efforts to assure that the material is treated in accordance with the
 20 provisions of this Stipulated Protective Order.

21 7. CHALLENGING CONFIDENTIALITY and ATTORNEYS’ EYES ONLY 22 DESIGNATIONS

23 7.1. Timing of Challenges. Any Party or Nonparty may challenge a
 24 designation of confidentiality at any time that is consistent with the Court’s
 25 Scheduling Order.

26 7.2. Meet and Confer. The Challenging Party shall initiate the dispute
 27 resolution process (which shall comply with Local Rule 37.1 et seq., and with
 28 Section 4 of Judge Audero’s Procedures (“Mandatory Telephonic Conference for

1 Discovery Disputes”).¹

2 7.3. Burden of Persuasion.

3 The burden of persuasion in any such challenge proceeding shall be on the
4 Designating Party. Frivolous challenges, and those made for an improper purpose
5 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
6 expose the Challenging Party to sanctions. Unless the Designating Party has waived
7 or withdrawn the confidentiality designation, all parties shall continue to afford the
8 material in question the level of protection to which it is entitled under the Producing
9 Party’s designation until the Court rules on the challenge.

10 8. ACCESS TO AND USE OF PROTECTED MATERIAL

11 8.1. Basic Principles. A Receiving Party may use Protected Material that is
12 disclosed or produced by another Party or by a Nonparty in connection with this
13 Action only for prosecuting, defending, or attempting to settle this Action. Such
14 Protected Material may be disclosed only to the categories of persons and under the
15 conditions described in this Stipulated Protective Order. When the Action reaches a
16 final disposition, a Receiving Party must comply with the provisions of Section 14
17 below.

18 Protected Material must be stored and maintained by a Receiving Party at a
19 location and in a secure manner that ensures that access is limited to the persons
20 authorized under this Stipulated Protective Order.

21 8.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless
22 otherwise ordered by the Court or permitted in writing by the Designating Party, a
23 Receiving Party may disclose any information or item designated
24 “CONFIDENTIAL” only to:

25 (a) The Receiving Party’s Outside Counsel of Record, as well as

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28 ¹ Judge Audero’s Procedures are available at
<https://www.cacd.uscourts.gov/honorable-maria-audero>.

1 employees of said Outside Counsel of Record to whom it is reasonably necessary to
2 disclose the information for this Action;

3 (b) The officers, directors, and employees (including In-House
4 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for
5 this Action;

6 (c) Experts of the Receiving Party to whom disclosure is reasonably
7 necessary for this Action and who have signed the “Acknowledgment and
8 Agreement to be Bound” (Exhibit A);

9 (d) The Court and its personnel;

10 (e) Court reporters and their staff;

11 (f) Professional jury or trial consultants, mock jurors, and Professional
12 Vendors to whom disclosure is reasonably necessary for this Action and who have
13 signed the “Acknowledgment and Agreement to be Bound” (Exhibit A);

14 (g) The author or recipient of a document containing the information or
15 a custodian or other person who otherwise possessed or knew the information;

16 (h) During their depositions, witnesses, and attorneys for witnesses, in
17 the Action to whom disclosure is reasonably necessary, provided: (i) the deposing
18 party requests that the witness sign the “Acknowledgment and Agreement to be
19 Bound” (Exhibit A); and (ii) the witness will not be permitted to keep any
20 confidential information unless they sign the “Acknowledgment and Agreement to
21 be Bound,” unless otherwise agreed by the Designating Party or ordered by the
22 Court. Pages of transcribed deposition testimony or exhibits to depositions that
23 reveal Protected Material may be separately bound by the court reporter and may
24 not be disclosed to anyone except as permitted under this Stipulated Protective
25 Order; and

26 (i) Any mediator or settlement officer, and their supporting personnel,
27 mutually agreed upon by any of the parties engaged in settlement discussions.
28

1 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
 2 OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation
 4 that compels disclosure of any information or items designated in this Action as
 5 “CONFIDENTIAL,” that Party must:

6 (a) Promptly notify in writing the Designating Party. Such notification shall
 7 include a copy of the subpoena or court order;

8 (b) Promptly notify in writing the party who caused the subpoena or order to
 9 issue in the other litigation that some or all of the material covered by the subpoena
 10 or order is subject to this Protective Order. Such notification shall include a copy of
 11 this Stipulated Protective Order; and

12 (c) Cooperate with respect to all reasonable procedures sought to be pursued
 13 by the Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served with
 15 the subpoena or court order shall not produce any information designated in this
 16 action as “CONFIDENTIAL” before a determination by the Court from which the
 17 subpoena or order issued, unless the Party has obtained the Designating Party’s
 18 permission. The Designating Party shall bear the burden and expense of seeking
 19 protection in that court of its confidential material and nothing in these provisions
 20 should be construed as authorizing or encouraging a Receiving Party in this Action to
 21 disobey a lawful directive from another court.

22 10. A NONPARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
 23 IN THIS LITIGATION

24 10.1. Application.

25 The terms of this Stipulated Protective Order are applicable to information
 26 produced by a Nonparty in this Action and designated as “CONFIDENTIAL”. Such
 27 information produced by Nonparties in connection with this litigation is protected by
 28 the remedies and relief provided by this Stipulated Protective Order. Nothing in these

provisions should be construed as prohibiting a Nonparty from seeking additional protections.

10.2. Notification.

In the event that a Party is required, by a valid discovery request, to produce a Nonparty's confidential information in its possession, and the Party is subject to an agreement with the Nonparty not to produce the Nonparty's confidential information, then the Party shall:

(a) Promptly notify in writing the Requesting Party and the Nonparty that some or all of the information requested is subject to a confidentiality agreement with a Nonparty;

(b) Promptly provide the Nonparty with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(c) Make the information requested available for inspection by the Nonparty, if requested.

10.3. Conditions of Production.

If the Nonparty fails to seek a protective order from this Court within fourteen (14) days after receiving the notice and accompanying information, the Receiving Party may produce the Nonparty's confidential information responsive to the discovery request. If the Nonparty timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Nonparty before a determination by the Court. Absent a court order to the contrary, the Nonparty shall bear the burden and expense of seeking protection in this Court of its Protected Material.

11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party immediately must (1) notify in

1 writing the Designating Party of the unauthorized disclosures, (2) use its best efforts
 2 to retrieve all unauthorized copies of the Protected Material, (3) inform the person or
 3 persons to whom unauthorized disclosures were made of all the terms of this
 4 Stipulated Protective Order, and (4) request such person or persons to execute the
 5 “Acknowledgment and Agreement to be Bound” (Exhibit A).

6 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
 7 PROTECTED MATERIAL

8 When a Producing Party gives notice to Receiving Parties that certain
 9 inadvertently produced material is subject to a claim of privilege or other protection,
 10 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
 11 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
 12 may be established in an e-discovery order that provides for production without prior
 13 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
 14 Parties reach an agreement on the effect of disclosure of a communication or
 15 information covered by the attorney-client privilege or work product protection, the
 16 parties may incorporate their agreement in the Stipulated Protective Order submitted
 17 to the Court.

18 13. MISCELLANEOUS

19 13.1. Right to Further Relief. Nothing in this Stipulated Protective Order
 20 abridges the right of any person to seek its modification by the Court in the future.

21 13.2. Right to Assert Other Objections. By stipulating to the entry of this
 22 Stipulated Protective Order, no Party waives any right it otherwise would have to
 23 object to disclosing or producing any information or item on any ground not
 24 addressed in this Stipulated Protective Order. Similarly, no Party waives any right to
 25 object on any ground to use in evidence of any of the material covered by this
 26 Stipulated Protective Order.

27 13.3. Filing Protected Material. A Party that seeks to file under seal any
 28 Protected Material must comply with Local Rule 79-5. Protected Material may only

1 be filed under seal pursuant to a court order authorizing the sealing of the specific
2 Protected Material at issue. If a Party's request to file Protected Material under seal is
3 denied by the Court, then the Receiving Party may file the information in the public
4 record unless otherwise instructed by the Court.

5 14. FINAL DISPOSITION

6 After the final disposition of this Action, within sixty (60) days of a written
7 request by the Designating Party, each Receiving Party must return all Protected
8 Material to the Producing Party or destroy such material. As used in this subdivision,
9 "all Protected Material" includes all copies, abstracts, compilations, summaries, and
10 any other format reproducing or capturing any of the Protected Material. Whether
11 the Protected Material is returned or destroyed, the Receiving Party must submit a
12 written certification to the Producing Party (and, if not the same person or entity, to
13 the Designating Party) by the 60-day deadline that (1) identifies (by category, where
14 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
15 that the Receiving Party has not retained any copies, abstracts, compilations,
16 summaries or any other format reproducing or capturing any of the Protected
17 Material. Notwithstanding this provision, Counsel is entitled to retain an archival
18 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
19 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
20 work product, and consultant and expert work product, even if such materials contain
21 Protected Material. Any such archival copies that contain or constitute Protected
22 Material remain subject to this Stipulated Protective Order as set forth in Section 5.

23 15. VIOLATION

24 Any violation of this Stipulated Order may be punished by any and all
25 appropriate measures including, without limitation, contempt proceedings and/or
26 monetary sanctions.
27
28

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: 04-07-23


Attorneys for Plaintiff,
Daniel M. Park

DATED: 04/10/2023


Attorneys for Defendant,
Dawn M. Irizarry

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: April 12, 2023

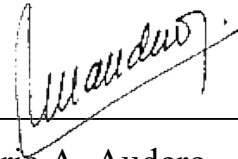

Maria A. Audero
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Central District of California
on _____, 2023 in the case of *Bon Sung Koo v. Delta Air Lines et al.*,
Case No. 2:22-cv-08294 ODW. I agree to comply with and to be bound by all the
terms of this Stipulated Protective Order, and I understand and acknowledge that
failure to so comply could expose me to sanctions and punishment in the nature of
contempt. I solemnly promise that I will not disclose in any manner any information
or item that is subject to this Stipulated Protective Order to any person or entity
except in strict compliance with the provisions of this Stipulated Protective Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action. I hereby appoint _____ [print
or type full name] of _____ [print or type
full address and telephone number] as my California agent for service of process in
connection with this action or any proceedings related to enforcement of this
Stipulated Protective Order.

Date: _____

City and State where sworn and signed:

Printed name: _____

Signature: _____